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Refer To File #. -

VIA HAND DELIVERY

March 30, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings

MAR 30 2012

Part of
Public Record

**Re: STB Finance Docket No. 35606, State of Michigan Department of
Transportation—Acquisition Exemption—Certain Assets of Norfolk
Southern Railway Company**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket are (i) the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1150.31, and (ii) the original and ten copies of a Motion to Dismiss the Notice of Exemption. Also enclosed is a disc containing the enclosed filings. Pursuant to 49 C.F.R. § 1002.2(e)(1), filing fees are waived for this filing because the State of Michigan Department of Transportation is a state government entity.

Please time and date stamp the extra copy of the filings and return it with our messenger.

If you have any questions, please contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter W. Denton'.

Peter W. Denton
Attorney for State of Michigan Department of
Transportation

Enclosures

FILED

MAR 30 2012

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

MAR 30 2012

**SURFACE
TRANSPORTATION BOARD**

232139

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35606

STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
PURSUANT TO 49 C.F.R. § 1150.31**

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TRANSPORTATION BOARD**

Kevin M. Sheys
Peter W. Denton
Nossaman LLP
1666 K Street, NW
Suite 500
Washington, D.C. 20006
(202) 887-1400

**Attorneys for State of Michigan
Department of Transportation**

Dated: March 30, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35606

STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION
– ACQUISITION EXEMPTION –
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31 et seq., the State of Michigan Department of Transportation (“MDOT”), a non-carrier,¹ hereby files this Verified Notice of Exemption related to its right to acquire from Norfolk Southern Railway Company (“NSR”) certain right-of-way and trackage located in Wayne, Washtenaw, Jackson, Calhoun and Kalamazoo Counties, Michigan (the “Subject Line”).

Simultaneously with this Verified Notice of Exemption, MDOT is filing in this docket a motion to dismiss this Notice. MDOT is utilizing this procedure to obtain a jurisdictional determination regarding its prospective common carrier status on the

¹ MDOT owns approximately 530 route miles of rail lines in the State of Michigan. MDOT acquired the bulk of these lines from the Penn Central Corporation in 1984. The Interstate Commerce Commission did not have jurisdiction over these transactions and these acquisitions did not make MDOT a rail carrier subject to ICC jurisdiction. See *Mich. Dep’t of Transp.—Abandonment—Penn Central Corp.’s Litchfield to Jonesville and Hillsdale to Quincy Lines in Hillsdale County, Mich.*, ICC Docket No. AB-5 (Sub-No. 207) (ICC served Mar. 11, 1983 & June 27, 1983). MDOT does not operate rail service on these or any of its other lines, and does not hold itself out as willing or able to provide common carrier rail services.

Subject Line. *See State of Me., Dept. of Transp.—Acquis. & Operation Exemption—Me. Cent. R.R. Co.*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”).

In accordance with the requirements of 49 C.F.R. § 1150.33, MDOT states as follows:

49 C.F.R. § 1150.32(e)
ADVANCE NOTICE

MDOT would not conduct any rail carrier operations on the Subject Line and therefore the prospective annual rail carrier revenue of MDOT would not exceed \$5 million. Accordingly, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this matter.

49 C.F.R. § 1150.33(a)
NAME AND ADDRESS OF APPLICANT

The full name and address of the applicant is as follows:

State of Michigan Department of Transportation
State Transportation Building
425 W. Ottawa St.
P.O. Box 30050
Lansing, MI 48909

49 C.F.R. § 1150.33(b)
APPLICANT’S REPRESENTATIVE

MDOT’s representative to whom correspondence regarding this matter should be addressed is as follows:

Kevin M. Sheys
Nossaman LLP
1666 K Street, NW
Suite 500
Washington, D.C. 20006
(202) 887-1400

49 C.F.R. § 1150.33(c)
STATEMENT CONCERNING AGREEMENT

Pursuant to an Agreement for Purchase and Sale by and between MDOT and NSR, MDOT has the right to purchase NSR's right, title and interest in the right-of-way, trackage and other physical assets (such as signboard and fiber optics) associated with the Subject Line, subject to NSR's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement.

49 C.F.R. § 1150.33(d)
OPERATOR OF THE PROPERTY

MDOT would operate (through a designated third-party operator) intercity passenger rail service on the Subject Line. As noted above, NSR would retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement. MDOT would not acquire any freight operating rights.

49 C.F.R. § 1150.33(e)
SUMMARY OF THE TRANSACTION

NSR would transfer to MDOT all of its right, title and interest in the right-of-way, trackage and other property and physical assets constituting the Subject Line, and extending from (1) approximately milepost 7.60 at Townline in Wayne County, MI to approximately milepost 119.60 at CP Baron in Calhoun County, MI, being approximately 112.00 miles in length, and (2) approximately milepost 121.39 in Gord, Calhoun County, MI to approximately milepost 145.60 in Kalamazoo, Kalamazoo County, MI, being approximately 24.21 miles in length. NSR would not transfer to MDOT certain real property and personal property otherwise part of the Subject Line, including Wayne Yard and Willow Run Yard. NSR would retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail

operations easement on the Subject Line. The quitclaim deed executed as part of the transaction would include as a permanent covenant of MDOT, running with and touching the land, that MDOT (and any of its operators, contractors, agents, licensees, and all permitted successors and assigns, except NSR) shall not use any of the Subject Line for any freight rail purposes.

The NSR contact information is as follows:

Norfolk Southern Corporation
ATTN: John Friedmann
Vice President - Strategic Planning
Three Commercial Place
Norfolk, VA 23510

MDOT would consummate acquisition of the Subject Line on May 31, 2012, or later.

49 C.F.R. § 1150.33(f)
MAP

A map indicating the area served by the Subject Line, including origins, termini, stations, cities and counties, is attached hereto as Exhibit A.

49 C.F.R. § 1150.33(g)
CERTIFICATION OF CLASS III STATUS

MDOT would not conduct any rail carrier operations and therefore the projected rail carrier revenues of MDOT would not exceed those that would qualify MDOT as a Class III rail carrier. A certificate complying with the provisions of 49 C.F.R. § 1150.33(g) is attached hereto as Exhibit B.

49 C.F.R. § 1150.33(h)
TRANSACTIONS IMPOSING INTERCHANGE COMMITMENTS

The proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

49 C.F.R. Part 1105
ENVIRONMENTAL/HISTORIC PRESERVATION DATA


Under 49 C.F.R. § 1105.6(c)(2), the acquisition of assets by MDOT would be exempt from environmental reporting requirements. MDOT's acquisition of the Subject Line would not result in significant changes in carrier operations (i.e., changes that would exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5)).

Under 49 C.F.R. § 1105.8(b)(1), the proposed acquisition of assets by MDOT also would be exempt from historic preservation reporting requirements. Further STB approval would be required to abandon NSR freight service on the Subject Line, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

49 C.F.R. § 1150.34
CAPTION SUMMARY

A caption summary in the appropriate form is attached hereto as Exhibit C.

Respectfully submitted,

By: 
Kevin M. Sheys
Peter W. Denton
Nossaman LLP
1666 K Street, NW
Suite 500
Washington, D.C. 20006
(202) 887-1400

Attorneys for State of Michigan
Department of Transportation

Dated: March 30, 2012

STB FINANCE DOCKET NO. 35606
EXHIBIT A
MAP OF THE SUBJECT LINE

Legend

● Corridor Segment Endpoint

CORRIDOR SEGMENTS

— Subject Line

Note: Endpoints are represented by global mileposts

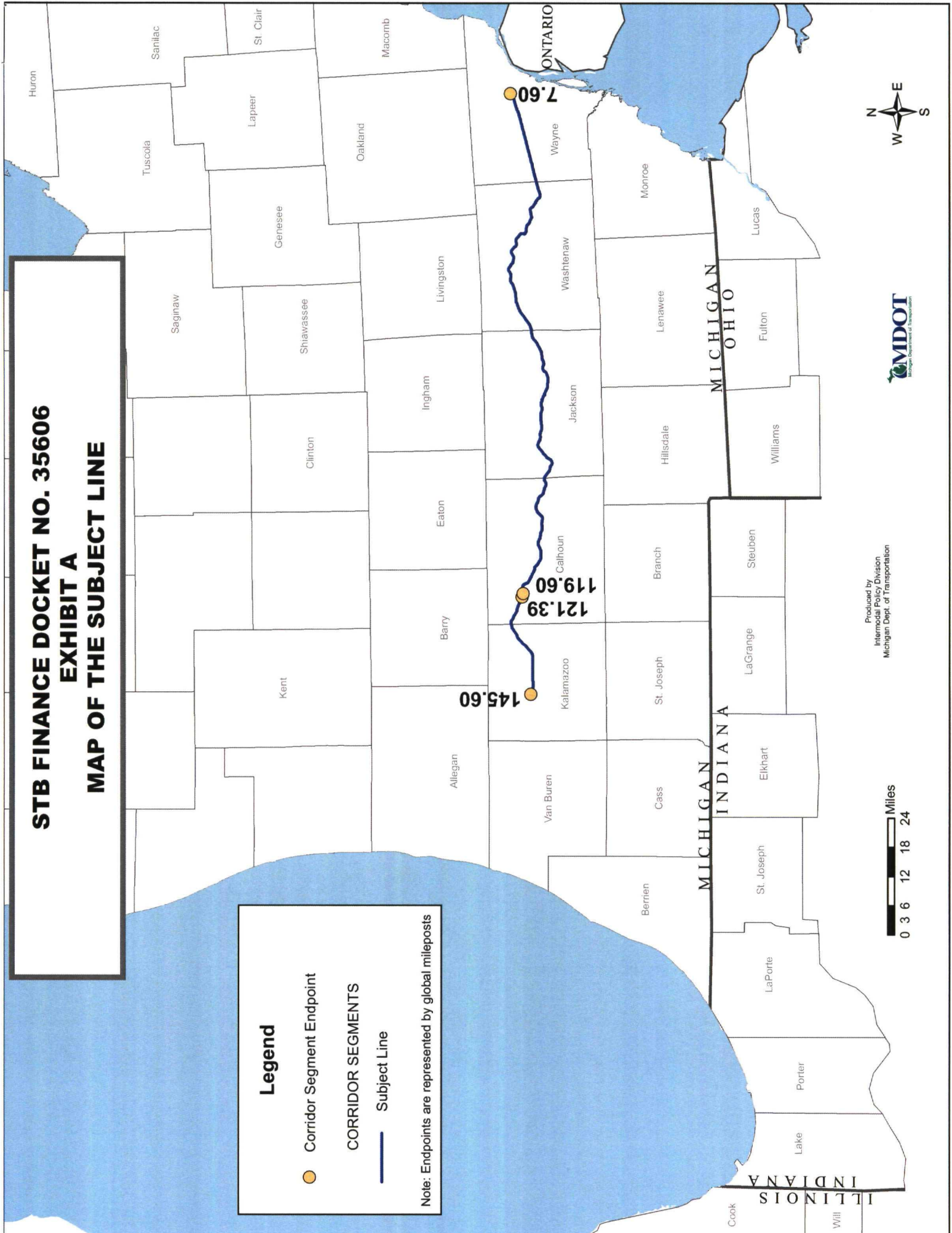


EXHIBIT B

CERTIFICATION

STATE OF MICHIGAN)
)
COUNTY OF INGHAM) SS:

Laura J. Mester, being duly sworn, deposes and says that he/she is
Chief Administrator Officer of the State of Michigan Department of Transportation
and that to the best of his/her knowledge, information and belief:

The State of Michigan Department of Transportation's projected rail carrier
revenues as a result of the transaction will not exceed those that would qualify it as a
Class III carrier.

Laura J. Mester
Laura J. Mester

SUBSCRIBED AND SWORN to
Before me this 29th day
Of March, 2012

Pamela G. Sebenick
Notary Public

My Commission expires:

PAMELA G. SEBENICK
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES Jul 24, 2018
ACTING IN COUNTY OF Ingham

EXHIBIT C

CAPTION SUMMARY

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35606

STATE OF MICHIGAN DEPARTMENT OF TRANSPORTATION – ACQUISITION EXEMPTION – CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY

The State of Michigan Department of Transportation has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31 related to its option to acquire from Norfolk Southern Railway Company the right, title and interest in the right-of-way, trackage and other property and physical assets of the rail line extending from (1) approximately milepost 7.60 at Townline in Wayne County, MI to approximately milepost 119.60 at CP Baron in Calhoun County, MI, being approximately 112.00 miles in length, and (2) approximately milepost 121.39 in Gord, Calhoun County, MI to approximately milepost 145.60 in Kalamazoo, Kalamazoo County, MI, being approximately 24.21 miles in length. NSR would not transfer to MDOT certain real property and personal property otherwise part of the Subject Line, including Wayne Yard and Willow Run Yard. NSR would retain an exclusive, irrevocable, perpetual, assignable, divisible, licensable and transferable freight rail operations easement on the Subject Line. The quitclaim deed executed as part of the transaction would include as a permanent covenant of MDOT, running with and touching the land, that MDOT (and any of its operators, contractors, agents, licensees, and all permitted successors and assigns, except NSR) shall not use any of the Subject Line for any freight rail purposes.

This Notice is filed under § 1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and ten (10) copies of all pleadings referring to STB Finance Docket No. 35606 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 395 E Street, SW, Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on: Kevin M. Sheys, Nossaman LLP, 1666 K Street, NW, Suite 500, Washington, D.C. 20006, (202) 887-1400.

Simultaneously with this Verified Notice of Exemption, the State of Michigan Department of Transportation is filing in this docket a motion to dismiss this Notice. The State of Michigan Department of Transportation is utilizing this procedure to obtain a jurisdictional determination regarding its prospective common carrier status on the Subject Line. See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991).

VERIFICATION

STATE OF MICHIGAN)
) SS:
COUNTY OF INGHAM)

 Laura J. Mester , being duly sworn, deposes and says that he/she is
 Chief Administrative Officer of the State of Michigan Department of Transportation,
and that he/she has read the foregoing Notice of Exemption and that to best of his/her
knowledge, information and belief, believes the facts asserted therein and that the same
are true as stated.

 Laura J. Mester
Laura J. Mester

SUBSCRIBED AND SWORN to
Before me this 29th day
Of March , 2012

 Pamela G. Sebenick
Notary Public

My Commission expires:

PAMELA G. SEBENICK
NOTARY PUBLIC, STATE OF MI
COUNTY OF INGHAM
MY COMMISSION EXPIRES Jul 24, 2018
ACTING IN COUNTY OF Ingham